

ABC 2025 (II) 110 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Sanjay Karol & Sandeep Mehta , JJ.)

Criminal Appeal No. of 2025

(Arising out of Special Leave Petition (Crl.) No. 1445 of 2025)

Decided on 26 June 2024

BIRKA SHIVA

- Appellant(s).

Versus

STATE OF TELANGANA

- Respondent(s).

Law Covered:-(A) *Indian Evidence Act, 1872 -- Section 35 (Bharatiya Sakshya Adhiniyam, 2023 -- Section 29) -- School Register -- Date of Birth Entry -- Admissibility & Probative Value -- School register entry is admissible in evidence -- However, it has no probative value unless the person who made the entry or the person who supplied the information is examined -- Mere production & marking of a document does not prove its contents -- Source of information must be established -- Held, in the absence of corroborative evidence, such as testimony from parents or the original entry-maker, the date of birth entry cannot be relied upon to conclusively determine the victim's minority. (Paras 7--12)*

(B) *Indian Penal Code, 1860 -- Section 363 (Bharatiya Nyaya Sanhita, 2023 -- Section 137(2)) -- Kidnapping from Lawful Guardianship -- Essential Ingredients -- Taking or enticing a minor from lawful guardianship without consent -- Prosecution must prove the victim was a minor & was taken or enticed away -- Held, where the victim voluntarily accompanied the accused & there was no evidence of force, inducement, or deceit, the offence of kidnapping is not made out. (Paras 13--15, 17)*

(C) *Indian Penal Code, 1860 -- Section 342 (Bharatiya Nyaya Sanhita, 2023 -- Section 127(2)) -- Wrongful Confinement -- Essential Ingredients -- Voluntarily obstructing a person so as to prevent that person from proceeding beyond certain circumscribed limits -- Held, where the victim resided with the accused for a considerable period, made no attempt to escape, & there was no evidence of physical restraint, the charge of wrongful confinement is not established. (Paras 13, 16--17)*

(D) *Indian Penal Code, 1860 -- Section 376 (Bharatiya Nyaya Sanhita, 2023 -- Section 64) -- Rape -- Absence of Consent -- Sexual*

a intercourse with a woman without her consent is essential to constitute rape -- Held, where the prosecutrix voluntarily cohabited with the accused for a prolonged period, did not raise any alarm, & there was no evidence of force or unwillingness, the charge of rape fails -- Conviction cannot be based solely on the prosecutrix's testimony if it is inconsistent, unsupported by medical evidence, or b belied by surrounding circumstances. (Paras 18--21)

(E) Criminal Trial -- Prosecution's Burden of Proof -- Age of Victim -- In cases where the victim's age is a pivotal factor, the prosecution must prove it beyond reasonable doubt -- Failure to examine family members, school authorities, or investigate alternate c official records (e.g., municipal birth register) -- Held, such omissions render the prosecution's case unreliable & entitle the accused to the benefit of doubt. (Paras 9--12, 21)

d **Facts:-**The appellant was convicted by the Trial Court under Sections 363, 342, & 376 IPC for kidnapping, wrongful confinement, & rape of a minor girl. The High Court upheld the conviction but reduced the sentence. The Supreme Court, on appeal, examined whether the prosecution proved the victim's minority, kidnapping, wrongful confinement, & rape beyond reasonable doubt. The Court found that the school certificate (Ex.P11) was not duly proved, as the Headmaster (PW-13) had no personal e knowledge of the source of the date of birth entry. The victim's voluntary conduct, absence of force, & lack of evidence of confinement or non-consensual intercourse led the Court to conclude that the essential ingredients of the offences were not met. The conviction was set aside, & the f appellant was acquitted of all charges.

Law of relief:-(i) Where the victim resided with the accused for a considerable period, made no attempt to escape, & there was no evidence of physical restraint, the charge of wrongful confinement is not established.

g (ii) Sexual intercourse with a woman without her consent is essential to constitute rape.

(iii) In cases where the victim's age is a pivotal factor, the prosecution must prove it beyond reasonable doubt - Omissions in h that render the prosecution's case unreliable & entitle the accused to the benefit of doubt.

Counsel:-

For Petitioner (s): Balaji Srinivasan.

For Respondent(s): Devina Sehgal.

Cases Referred:-

1. *Narbada Devi Gupta v. Birendra Kumar Jaiswal*: (2003) 8 SCC 745 (Para 8) **a**
2. *Birad Mal Singhvi v. Anand Purohit*: 1988 Supp SCC 604 (Para 8.1)
3. *Pratap Singh v. State of Jharkhand*: (2005) 3 SCC 551 (Para 8.1)
4. *Babloo Pasi v. State of Jharkhand*: (2008) 13 SCC 133 (Para 8.1) **b**
5. *Murugan v. State of T.N.*: (2011) 6 SCC 111 (Para 8.1)
6. *State of M.P. v. Munna*: (2016) 1 SCC 696 (Para 8.1)
7. *C. Doddamarayana Reddy v. C. Jayarama Reddy*: (2020) 4 SCC 659 (Para 8.1) **c**
8. *Manak Chand v. State of Haryana*: 2023 SCC OnLine SC 1397 (Para 8.1)
9. *State of Chhattisgarh v. Lekhram*: (2006) 5 SCC 736 (Para 8.2)
10. *Satpal Singh v. State of Haryana*: (2010) 8 SCC 714 (Para 8.3)
11. *Vishnu v. State of Maharashtra*: (2006) 1 SCC 283 (Para 8.3) **d**
12. *Madan Mohan Singh v. Rajni Kant*: (2010) 9 SCC 209 (Para 8.4)
13. *Alamelu v. State*: (2011) 2 SCC 385 (Para 8.5)

JUDGMENT***Sanjay Karol, J.:-***1. Leave Granted. **e**

2. The present appeal arises from the final judgment and order dated 26th June 2024 passed by the High Court for the State of Telangana at Hyderabad in Criminal Appeal No.384 of 2018, which confirmed the judgment and order dated 29th January 2018 passed by the Court of the Special Sessions Judge for Fast Tracking the Cases relating to Atrocities Against Women at Karimnagar, Hereinafter referred to as the 'Trial Court', in Sessions Case No.284 of 2014, whereby the Appellant-convict, Birka Shiva Hereinafter referred to as the 'appellant', was convicted under Sections 376, 363, and 342 of the Indian Penal Code, 1860 Hereinafter referred to as 'IPC'. However, while upholding the order of conviction passed by the Trial Court, the High Court vide the impugned judgment, and order reduced the sentence awarded to the appellant and modified the sentence in the following manner: **f**

Section	Trial Court	High Court
363 IPC	5 Years	1 Year
376 IPC	7 Years of R.I.	2 Years of R.I.
342 IPC	6 Months of R.I.	6 Months of R.I.

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3. The prosecution case as emerging from the record, as also set out by the Courts below, is as follows:

- a 3.1. The appellant, a friend of PW-4 (victim's brother), was a regular visitor to the house of PW-1 (victim's mother). During such visits, he came in contact with the victim (PW-3), who was pursuing 1st year of her graduation.
- b 3.2. On the morning of 4th August 2012, the appellant took the victim to Peddapalli, and from there to Hyderabad, where he tied a 'pasupukommu' (turmeric thread) around her neck, thereby creating an impression that they were married. The appellant then
- c confined the victim in a room at Shadnagar, Hyderabad, and they started residing together as a couple, subjecting her to sexual intercourse, away from the parental home of the victim.
- 3.3. On 8th August 2012, when the victim was untraceable, her mother (PW-1) lodged a missing complaint. Based on the said
- d complaint, a case was registered as FIR No.85 of 2012 at PS Godavarikhani - II Town, District Karimnagar, under Section 366(A) of the IPC. PW-1 alleged that the appellant had lured and induced the victim and taken her away to some unknown place by taking the opportunity of her innocence.
- e 3.4. On 12th October 2012, when the appellant sustained injuries in a motorcycle accident, he was admitted to the hospital at Karimnagar. At that time, the victim came to her mother (PW-1) and narrated the ordeal to her family.
- f 3.5. Upon her return, the victim's statement was recorded, and based on her statement, Sections 342, 376, and 366 of the IPC were added. The victim was also examined by a doctor (PW-8), who took vaginal swabs and sent them to the Regional Forensic Science Laboratory (RFSL), Karimnagar. After the surrender of the appellant, a potency
- g test was conducted by a doctor (PW-9), who issued a certificate stating that the appellant was potent to commit a sexual act.
- 3.6. After completing the investigation, chargesheet dated 30th
- h January 2013 came to be submitted before the Judicial First Class Magistrate at Manthani, who committed the case to the Sessions Division at Karimnagar. The case was initially taken on file by the Sessions Court as S.C. No.284 of 2014 and then assigned to the Assistant Sessions Judge, Manthani. Charges under Sections 366(A), 342, and 376 of IPC were framed against the appellant, to which he pleaded not guilty and claimed trial. The case was subsequently transferred to the Special Court.

3.7. To bring home the guilt of the appellant, the prosecution examined 13 witnesses and exhibited 11 documents. On behalf of the defence, Ex.D1, being a contradiction in the statement of victim (PW-3) recorded under Section 161 of the Code of Criminal Procedure, 1973 'CPPC' for short, was marked. The details of the prosecution witnesses are summarised below :

PW	Name	Role/Relation
1	B. Komuramma	complainant/mother of victim
2	B. Raju	brother of victim
3	XXX5	victim
4	B. Sajjan Kumar	brother of victim
5	Akula Mallikarjun	owner of house at Hyderabad in which the appellant allegedly confined the victim
6	Akula Prasanth	Panch witness
7	Jula Ramulu	Panch witness
8	Dr. Lavanya	Doctor who examined the victim
9	Dr. C.S. Mohan Rao	Doctor who conducted the potency test of the appellant
10	Sarwar Shareef	Investigating Officer ⁶ who recorded victim's 161 statement
11	Md. Fasiuddin	I.O. who registered the missing report of victim
12	R. Prakash	Third I.O.
13	Bhagavathula Shanker	School Headmaster

4. The Trial Court, after elaborate consideration, vide judgment and order dated 29th January 2018, convicted the appellant under Sections 363, 342, and 376 of IPC; however, acquitted him in relation to the offence committed under Sections 366(A) or 366 IPC. The Court gave the following findings:

- a (i) Upon consideration of the testimonies of PW-1 to PW-5, no circumstances are elicited to discredit their testimony that PW-3 had been missing from her parental house since 4th August 2012. PW-1 to PW-4 confirmed the friendship between the appellant and PW-4, as well as the appellant's frequent visits to their house.
- b (ii) PW-3 (victim) categorically deposed that the appellant took her away from her parent's house to Hyderabad, where she was confined at the home of PW-5 for nearly two months. Her evidence also shows that the appellant had sexual intercourse with her.
- c (iii) The contradictions in Ex.D1, i.e., the statement of PW-3 recorded under Section 161 CrPC, was not proved by the defence in the cross-examination of the Investigation Officer concerned. Even if it is accepted, it would merely show that the appellant took the victim from her house, not discrediting the core allegation.
- d (iv) Prosecution produced Ex.P11 (date of birth certificate) which clearly shows that PW-3 was born on 3rd November 1996, a fact which was recorded in the records of Zilla Parishad High School, where she studied from 6th to 10th Class. Therefore, as of the date of the offence, the victim was under 16 years of age.
- e (v) Considering the total circumstances, charges under Section 376 (rape), Section 363 (kidnapping), and Section 342 (wrongful confinement) were proved beyond a reasonable doubt. However, since the facet of forced marriage or seduction was not established, the appellant was acquitted under Sections 366 or 366
- f (A) IPC.

g 5. Aggrieved by the said order of conviction, the appellant preferred an appeal before the High Court for the State of Telangana at Hyderabad, which vide the impugned judgment and order dated 26th June 2024 confirmed the conviction of the appellant, but

g however, modified the sentence awarded as set forth in Paragraph 2. The relevant extract of the High Court judgment is as follows:

h "6. P.W.1 is the mother, P.Ws.2 and 4 are the brothers of the victim, P.W.3. In order to prove the age of the victim the prosecution produced Ex.P11 the date of birth certificate. As per Ex.P11 the date of birth of the victim is 03.11.1996 and she was aged only below 16 years at the time of incident. P.W.3 in his cross-examination has categorically admitted that she did not state to police that the accused forcibly kidnapped her and her evidence does not reveal that the accused used any force on her for having sexual intercourse. However, since she was aged below 16 years in

view of the definition of rape under Section 375 of IPC having sexual intercourse with a woman aged below 16 years with or without her consent amounts to rape. Apart from that the evidence of P.W.3 clearly established that the accused took away her to Hyderabad and confined in the house of P.W.5 and enjoyed her sexually. It is now well established that if the Court is satisfied from the evidence of the victim, a conviction can be solely based on such evidence without looking for further corroboration. Same can be done because the prosecutrix is no more treated as an accomplice in the crime. An accused cannot cling to a fossil formulae and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. Therefore, considering the evidence of P.W.3 the trial Court has rightly convicted the accused for the offences under Sections 376, 363 and 342 of I.P.C."

(Emphasis Supplied)

6. Still aggrieved, the Appellant-convict, pleading his innocence, is before us, challenging his conviction and sentence, as referred to supra. We have heard learned counsel for the parties and also perused the material on record. The issues that arise for our consideration are:

- (a) Whether the prosecution has established beyond reasonable doubt that the victim (PW-1) was a minor (under sixteen/eighteen years of age) as on the date of the alleged incident, i.e., 4th August 2012;
- (b) Whether the appellant lured or enticed the victim away from the lawful guardianship of her parents without their consent, thereby committing the offence of kidnapping under Section 363 of IPC;
- (c) Whether the appellant wrongfully confined the victim and prevented her from moving in any direction out of her volition; and
- (d) Whether the appellant forcefully had a physical relationship with the victim to constitute rape under Section 376 of IPC.

OUR VIEW

A) Age of the Victim/Prosecutrix

7. The prosecution has relied primarily on Ex.P11, the birth certificate issued by the Zilla Parishad High School, to establish that the victim was below the age of sixteen years on the date of the alleged offence, i.e., 4th August 2012. According to Ex.P11, the victim's date of birth was 3rd November 1996, which, if accepted,

would make her approximately 15 years 9 months old at the relevant time.

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8. The evidentiary value of such an entry made in public or official registers may be admissible in evidence under Section 35 of the Indian Evidence Act, 1872 Hereinafter referred to as the 'Evidence Act'. However, admissibility is distinct from probative value. While such documents may be admitted into evidence, their evidentiary weight depends on proof of their authenticity and the source of the underlying information. Mere production and marking of a document as exhibited by the Court does not amount to proof of its contents. Its execution has to be proved by leading substantive evidence, that is, by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'. [See: *Narbada Devi Gupta v. Birendra Kumar Jaiswal*: (2003) 8 SCC 745] We may refer to a few judicial pronouncements of this Court in this regard:
- 8.1. This Court, in *Birad Mal Singhvi v. Anand Purohit*: 1988 Supp SCC 604, held that the entries contained in the school register are relevant and admissible but have no probative value unless the person who made the entry or provided the date of birth is examined. It was observed:
- "14. ... If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. ... The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value, but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. ..."
15. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on

must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to the date of birth made in the school register is relevant and admissible under Section 35 of the Act, but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. ... The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made is examined..."

(Emphasis Supplied)

This decision has been consistently followed by this Court in *Pratap Singh v. State of Jharkhand*: (2005) 3 SCC 551; *Babloo Pasi v. State of Jharkhand*: (2008) 13 SCC 133; *Murugan v. State of T.N.*: (2011) 6 SCC 111; *State of M.P. v. Munna*: (2016) 1 SCC 696; *C. Doddamarayana Reddy v. C. Jayarama Reddy*: (2020) 4 SCC 659; and *Manak Chand v. State of Haryana*: 2023 SCC OnLine SC 1397.

8.2. A coordinate Bench of this Court in *State of Chhattisgarh v. Lekhram*: (2006) 5 SCC 736, through S.B. Sinha, J., clarified that though entries in school registers are admissible under Section 35 of the Evidence Act, their evidentiary value improves only when corroborated by oral testimony of persons who are aware of its content, such as parents or the person who made the entry at the time of admission. It held as under:

"12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.

13....The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive, but it has evidentiary value. Such evidentiary value of

a a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix."

8.3. Similarly, this Court in Satpal Singh v. State of Haryana: (2010) 8 SCC 714, stated that though a document may be admissible, but to determine whether the entry contained therein has any probative value, may still be required to be examined in the facts and circumstances of a particular case. It held as follows:

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d "26. In Vishnu v. State of Maharashtra [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded.

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f 28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case."

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h 8.4. In Madan Mohan Singh v. Rajni Kant: (2010) 9 SCC 209, this Court held that the entries made in the official record may be admissible under Section 35 of the Evidence Act, but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded. It was held as follows :

"20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but

the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

21.... For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded. ...”

8.5. This Court, in *Alamelu v. State*: (2011) 2 SCC 385, while dealing with a similar factual matrix, held that the prosecution had failed to prove that the girl was a minor at the relevant date since the transfer certificate of a Government School showing age was not duly proved by witnesses. It observed as under:

“40. Undoubtedly, the transfer certificate, Ext. P-16 indicates that the girl's date of birth was 15-6-1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident i.e. 31-7-1993. The transfer certificate has been issued by a government school and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Evidence Act, 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined.

41. We may notice here that PW 1 was examined in the Court on 9-8-1999. In his evidence, he made no reference to the transfer certificate (Ext. P-16). He did not mention the girl's age or date of birth. PW 2 was also examined on 9-8-1999. She had also made no reference either to her age or to the transfer certificate. It appears from the record that a petition was filed by the complainant under Section 311 CrPC seeking permission to produce the transfer certificate and to recall PW 2. This petition was allowed. ... In her

a cross-examination, she had merely stated that she had signed on the transfer certificate, Ext. P-16 issued by the school and accordingly her date of birth was noticed as 15-6-1977. She also stated that the certificate has been signed by the father as well as the Headmaster. But the Headmaster has not been examined. Therefore, in our opinion, there was no reliable evidence to b vouchsafe for the truth of the facts stated in the transfer certificate."

(Emphasis supplied)

c 9. In the attending facts, we find that the evidentiary value of Ex.P11 is significantly undermined in the absence of corroborating material. We say so for the following reasons:

d (i) PW-13, who is the Headmaster of Zilla Parishad High School, Chandanapur, Peddapalli District (erstwhile Karimnagar District), stated that the victim studied in his school from 2007 to 2013, i.e., 6th Class to 10th Class and that the Admission Register records her date of birth as 3rd November 1996. However, in his cross-examination, he admitted that he had no personal knowledge as to the source or basis on which the date of birth was recorded therein or if the recorded date of birth was correct or not. The relevant part of his e testimony is extracted hereunder:

f "...In our school there is not clerk to maintain records. I did not produce any certificate pertaining to earlier school I, In which P.W.3 studies up to 5th Class. There must be basis for entering date of birth of a student in our school such as her earlier school record. I do not have personal knowledge as to what record was produced by parents of P.W. 3 as basis to enter her date of birth in our school as I was not Head Master in 2007.

g I cannot say in which school P.W.3 studied up to 5th Class. In the nominal roll register of our school, the signature of P.W.ass3 was obtained. I do not have personal knowledge whether the said date of birth of P.W.3 was correct or not and I am giving evidence only on the basis of record."

(Emphasis Supplied)

h (ii) The prosecution has failed to examine the person who had made the entry in the Admission Register to ascertain on what basis such an entry was made. More so, the entry in respect of the date of birth of the victim in the primary school register, i.e., 1st Class to 5th Class, has not been produced and proved before the Courts below to verify the age as per its records. It is also not possible to ascertain

from the records as to whether the date of birth was provided by the parents or simply entered at the behest of another party, without verification, at the time of admission to Zilla Parishad High School. a

(iii) The testimonies of PW-1, PW-2 and PW-3 are also telling that none of them mentioned the victim's age with specificity. There is no reference to Ex.P11, and no attempt was made by the prosecution to adduce corroborative testimony regarding the victim's date of birth from her family members. b

Thus, while examining the issue at hand, on the anvil of the principles elucidated above, it is essential to notice that the prosecution has failed to toe the line of legal requisites. There is nothing on record to corroborate the date of birth of the victim as recorded in the birth certificate (Ex.P11) issued by the school. Therefore, it cannot be relied upon to definitely determine the age of the victim and held with certainty that the victim was below sixteen/ eighteen years of age. c

10. All three of the I.Os. are curiously silent on the aspect of age of the alleged rape victim. This, in itself, raises credible questions about the investigation since a charge of rape is involved in which the age of the victim is an essential factor. PW-11, the I.O. who registered the FIR, categorically states that the mother (PW-1) and brothers (PWs 2 and 4) of the victim did not give him particulars of her year of birth and age. PW-12, who was the 3rd I.O., in his cross-examination admitted to not having pursued the aspect of the victim's age sufficiently. The relevant portion of his testimony is as under: d

“As per Ex.PI complaint P.W.3 was studying in S.R.K. Junior college, Godavarikhani. I have not visited the said college. I did not examine her classmates to enquire as to how P.W.3 was going to college. I did not enquire as to the birth place of P.W.3. It is true every Grampanchayath will maintain births and deaths register. I did not verify whether the date of birth of P.W.3 was got registered in the Grampanchayath. I did not enquire as to where P.W.3 completed her primary education. I did not investigation as to who got filled in the form of admission of P.W.3 in the school.” e f

11. Furthermore, none of the victim's family members, i.e., her mother and brothers have said anything about the age of the victim in their depositions made in the Court. Even the victim is effectively silent on this aspect, only stating that she and her siblings were born approximately two years apart and thereby making an estimation of their ages as well as her own. Throughout her deposition, the victim has remained silent with regard to her particular date of birth. g h

a 12. Well, suffice it to say that Courts of law cannot make a
determination of guilt in thin air, based on estimations. In the present
facts and circumstances, the proof submitted by the prosecution in the
form of Ex.P11 (birth certificate issued by the school) was not
sufficient to arrive at a finding that the prosecutrix was less than
b sixteen/eighteen years of age, especially when such a document was
not sufficiently corroborated. Therefore, it was neither safe nor fair to
convict the appellant based on it, particularly in the context where the
age of the victim was such a pivotal factor.

**B) Kidnapping from Lawful Guardianship/ Wrongful
Confinement**

c 13. The prosecution has alleged that the appellant lured the
victim away from her lawful guardianship with the intent to sexually
exploit her, thereby attracting the offence under Section 363 IPC.
Further, it is alleged that she was wrongfully confined by the
d appellant for a period of approximately two months in a house,
reportedly owned by PW-5 amounting to offence punishable under
Section 342 IPC. However, on a close scrutiny of the evidence, we find
the claim to be wholly unsubstantiated and improbable.

e 14. From the record, it is unreputably clear that the appellant,
being a friend of PW-4, was in constant contact with the victim since
he was a regular visitor at her parental house. PW-2 categorically
states that - 'the accused is friend my brother Sajan Kumar. Accused
Shiva used to come to my house daily.' The victim herself
f corroborated this in her examination-in-chief by acknowledging that
her acquaintance with the appellant arose from his regular visits to
her home.

g 15. To sustain a charge of kidnapping from lawful
guardianship, the essential ingredients that must be satisfied include
- (i) taking or enticing a minor (under 18 years of age if female); (ii)
from the lawful guardianship of her parents or guardians; and (iii)
without their consent. However, the victim's own deposition does not
demonstrate that the appellant forcibly removed or enticed her from
the guardianship of her parents with deceit or inducement. She
h admits to having voluntarily accompanied the appellant on a
motorbike on the morning of 4th August 2012 and having resided
with him for nearly two months. Furthermore, there is an
unexplained delay of four days in lodging the missing report. The
victim was reportedly missing since the morning of 4th August 2012,
yet, the FIR was registered only on 8th August 2012. Neither the

mother (PW-1) nor the brothers (PWs 2 and 4) of the victim offered any credible explanation for such a delay. This silence in the face of the alleged kidnapping raises legitimate doubts over the genesis of the prosecution's case. a

16. Turning now to the charge under Section 342 IPC, which penalises wrongful confinement, it must be established that the accused voluntarily obstructed the victim in such a manner as to prevent her from proceeding beyond certain circumscribed limits. The testimony of the victim (PW-3) indicates that she resided with the appellant for nearly two months. Notably, what is absent from the record is any assertion that she was physically restrained, or her movements were restricted. The victim admits that the appellant left daily for work and that she remained alone at the residence. Finally, it is suggested that the appellant used to put a lock on the main door of the house. But this version appears to be just an afterthought and not correct. For, there is no indication that she attempted to flee, contact neighbours, or otherwise signal her unwillingness to stay in that house. This conduct stands in stark contrast to what one might expect of a person wrongfully confined against his/her volition. For ready reference, the relevant part of the statement of the victim is extracted hereunder: b

“Chief Examination : c

P.W.1 is my mother, P.W.2 Raju and Sajjan Kumar are my brothers. On the date of incident I am studying inter 1st year at S.R.K. college, Godavarikhani. On 04.08.2012, I went to college in the morning. The accused came to the college and also said that he will marry me and took me to Shadnagar of Hyderabad by bike and kept me in one house. Accused is working as employee in Gas Cylinder Company at Hyderabad. d

Accused me in the house locked the house, and went to the gas company for attending duties. Accused had sexual intercourse with me at Hyderabad. I was present in the house and locked the house and went to gas company for attending duties. Accused had sexual intercourse with me at Hyderabad. I was present in the house at Hyderabad for a period of two months. After two months accused met with an accident and admitted in a hospital at Secundrabad and thereafter he was shifted to Karimnagar by their parents. The brother-in-law by name Kumar came to Hyderabad along with others and took me to police station. Godavarikhani-II Town P.S. B incline colony. The police shifted me to hospital. I e

a know the accused through my brother my name Sajjan Kumar. Hence, I got acquaintance with him. The accused used to come to my parents house regularly. I can identify the accused who was present in the court hall. Police examined me.

Cross examination by Sri S. Bhasker Reddy. Advocate for the accused.

b ...My brother and mother came to P.S. when I was present at P.S. I was present at Secundrabad hospital for two days and also I came to Karimnagar hospital, again I went to P.S. I have not stated before the police about the said fact. It is not true to suggest that
c the police did not record my statement. I have not stated before the police about the location and name of the temple. The witness says I stated before the police that the accused married me. I do not know the name of the gas cylinder company. The doors were closed when the accused was present in the house. It is not true to
d suggest that there is a possibility for escaping from the house as well as to go to outside for contact through phones. I never talked with the neighbours.

Dt. 26.6.2015 witness recalled, sworn for further cross-examination
Cross-exam for accused, Sri S.B.R. Adv.,

e It is true there is no mentioned in my 161 CrPC statement that how much period I am having acquaintance with the accused. It is true in my 161 CrPC statement there is no mentioned that the accused forcibly kidnapped me. It is true I never mentioned the company
f and its motor cycle number. It is true I never mentioned that accused went to my college that I stated he intended to marry me. It is true that I never mentioned in my chief examination, that the accused locked in room. It is not true to say that I never mentioned in my 161 statement the place of accident at Hyderabad. My elder
g brother is 22 yrs, my mother's brother is age 20 years, It is not true to say that there is gap of 2 yrs for every child begotten by the Mother. My date of birth is recorded in O.P. records. I produced my original in inter college. It is not true to say that I never
h accompanied with the accused on a motor cycle in Hyderabad. It is not true to say that I was not kept at Hyderabad by the accused.

It is not true to say that I never performed family affairs at Hyderabad. It is not true to say that I was not taken to Hanuman Temple and I got married. I did not produced any recording of marriage of temple to the Police Authority. It is not true to say that

my marriage was not effected since no registration was at temple....”

Upon reading the above, it becomes evident that the victim cohabited with the appellant for a considerable duration without asserting that her presence was coerced, manipulated, or forced through threats or deceit. It was only when the appellant met with an accident on 12th October 2012 and was hospitalised, that the victim returned home. Even when the appellant was hospitalised, the victim stayed with him for two days at the hospital. These circumstances strongly suggest that the victim was not staying with the appellant against her own volition or will. We further find the narrative provided by her during the trial, to be improvised from her earlier statement recorded by the Police under Section 161 CrPC, which reads as:

“CASE DAIRY PART-II

PS GDK -II TOWN District: KARIMNAGAR

FIR No. 85 / 2012 Date of examination: 17.10.2012

STATEMENT OF XXX Name redacted as per the direction in

Nipun Saxena (supra), 16 YEARS, GOLLA,

STUDENT INTERMEDIATE 1st YEARS R/O

SINGIREDDYPALLI

I, am a resident of Singireddypalli, I am studying in S.R.K. Junior College, Godavarikahani in Intermediate 1st year, Birka Shiva S/o Madunaiah, 25 years, Tenugu is friend of my second elder brother Saijan and he used to visit my house now and then for my brother and thus he was moving closely with me and he informed that he is in love with me and told that he will marry me, on 04.08.2012 in the morning hours he came to my house and took me on his motorcycle to Hyderabad and kept me in a house at Shadnagar. He tied a thread with turmeric nut in my neck in Hanumana Temple and since that day he was having sexual intercourse with me in the said room and he was working in a cylinder company. After one moth he took off the turmeric nut from my neck. On 12.10.2012 in the night hours at Ameerpet he slipped and fell down from his motor cycle and sustained injuries and now he is getting treatment at Vasudeva Hospital, Karimnagar.

Sd/-

Name: Sarvar Shareef

Rank: S.I. of Police,

GDK II Town.”

a 17. Therefore, in this backdrop, we find that there is nothing
on record to show that the appellant forcibly took the victim away
from lawful guardianship of her parents without their consent or
wrongfully confined in a locked room. On the contrary, the evidence
indicates that the victim voluntarily accompanied the appellant on a
b motorbike on 4th August 2012 and had a free access to the house
where both of them were residing. Therefore, the charge of
kidnapping from lawful guardianship under Section 363 IPC and
wrongful confinement under Section 342 is also not made out.

c **C) Rape The charge of rape under Section 376 IPC**

d 18. The prosecution has sought conviction of the appellant
under Section 376 IPC, asserting that he had committed forcible
sexual intercourse with the victim. It is trite law that a conviction for
rape can be sustained solely on the testimony of the prosecutrix/
e victim, provided that her evidence inspires confidence in the mind of
the Court and appears to be natural and truthful. However, if the
version given by the prosecutrix is inconsistent, unsupported by any
medical evidence, or the whole surrounding circumstances are highly
improbable and believable in the case set up by the prosecutrix, the
f Court shall not act on the solitary evidence of the prosecutrix. [See:
State of Punjab v. Gurmit Singh (1996) 2 SCC 384; Vimal Suresh
Kamble v. Chaluverapinake Apal S.P. (2003) 3 SCC 175; Sadashiv
Ramrao Hadbe v. State of Maharashtra (2006) 10 SCC 92;
Tameezuddin v. State (NCT of Delhi) (2009) 15 SCC 566; Narender
Kumar v. State (NCT of Delhi) (2012) 7 SCC 171; and Mukesh v. State
(NCT of Delhi) (2017) 6 SCC 1]

g 19. In the present case, we find that this charge has no legs to
stand on, for she only makes a positive statement about the
occurrence of sexual intercourse and does not even in the slightest
imply the same to be against her will. The absence of consent is the
sine qua non to sustain a charge under Section 376. That cannot, in
our opinion, be met as per the evidence on record.

h 20. Further, PW-8, who was, at the relevant time, a Civil
Assistant Surgeon at Area Hospital, Godavarikhani, opined upon
examination of the victim that there was regular sexual intercourse
but gave no definite statement regarding the recent occurrence. Our
conclusion here is further fortified by the fact, as discussed above,
that for two months, they resided peacefully together without even a
hint of discomfort or desire on the part of the victim to leave or escape

from the house in Hyderabad.

21. The responsibility of the prosecution is to prove the case beyond reasonable doubt, which, in our considered view, it has failed to do in the present case. It appears that the entire prosecution story has been concocted for reasons best known to the prosecution. Under the present facts and on the weight of the evidence placed before the Trial Court, we are of the considered opinion that no definite conclusion could be drawn about the age of the victim. The prosecution, therefore, has not successfully proved that the victim was less than sixteen/eighteen years of age at the time of the alleged commission of crime, and thus, the benefit ought to have been given to the appellant. Secondly, as to the factum of kidnapping, wrongful confinement and rape, we are convinced that no such offence is made out as it does not meet the essential ingredients as defined in Sections 342, 363 and 376 IPC. We do not find any evidence which may suggest that the appellant kidnapped the victim from lawful guardianship or confined her, for approximately two months, against her volition in a house at Hyderabad or had sexual intercourse with the victim against her will or without her consent.

22. In that view of the matter, consequently, the conviction of the Appellant-convict under Sections 376, 363, and 342 is set aside, and, therefore, he is entitled to be acquitted of all charges. The impugned judgment and order of the High Court referred to in Para 2, is set aside. The appeal is accordingly allowed.

Pending application(s), if any, shall stand disposed of.

Result:- Appeal allowed. Conviction set aside. Appellant acquitted of all charges and to be set at liberty if not required in any other case.

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